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TAGS: [PHUM](#) [KJUS](#) [PGOV](#) [IZ](#)  
SUBJECT: DETAINEE RELEASES: BALANCING SECURITY WITH  
HUMANITARIAN OBLIGATIONS

REF: A. 08 BAGHDAD 3947  
[B](#). BAGHDAD 358  
[C](#). 08 BAGHDAD 2837  
[D](#). BAGHDAD 149

Classified By: PMIN Robert Ford for Reasons 1.4 (d).

[1](#). (S) Summary: Aside from its compelling humanitarian aspects, the detainee issues continues to be a serious obstacle hindering nation-wide political accommodation. The GOI has a legitimate interest in safeguarding its citizens and establishing control throughout the country's cities and rural areas. It also needs to show that it is maintaining a balance between security concerns and maintaining a fair and even-handed approach toward law enforcement. Not surprisingly, detainees held in American facilities also are a sensitive issue politically. As part of the Security Agreement, the USG and GOI established a Joint Sub-Committee (JSC) on detainees to facilitate bilateral cooperation on Coalition Forces-held detainees and to establish a legal mechanism for the transfer of wanted detainees from USG to GOI custody (ref A). Although releases and transfers have begun in earnest under this system, many Sunni Arab leaders have expressed concern that former detainees are either being immediately rearrested or subsequently detained solely because they had been in USG custody. There is little if any support system in place to help former detainees reintegrate into society and jobs are often difficult for them to find. Meanwhile, the GOI has expressed a clear preference for moving slowly on releases and continually presses the USG to turn over all detainees to GOI custody.

[2](#). (S) While considerable attention has been centered on USG detainee releases, there are also problems with detainee populations in GOI facilities. Despite more than 7,500 amnesty releases in 2008 and steady processing of cases, the net GOI-held detainee population has increased (ref B). Many detainees remain behind bars long after receiving valid release orders, in large part due to delays in verifying that the released has no other outstanding warrants. The lack of a national warrants database continues to hinder the release process. Judicial "throughput" remains a serious problem at many facilities, primarily due to a lack of Investigative Judges (IJ) and intimidation felt by local judges. The steady influx of new detainees from ongoing operations adds to the detainee population at a greater rate than pending cases can be investigated and tried. It is not uncommon for detainees to wait months and sometimes years before their case is heard by an IJ. GOI operations, e.g., last fall's "Operation Benevolent Diyala," are often perceived as targeting or singling out Sunnis, and contribute to perceptions that the government has a sectarian agenda (ref C). End Summary.

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Detainee Processing Procedures  
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[3](#). (S) Coalition Forces (CF) released 18,600 detainees in 2008 and currently hold approximately 12,500 individuals.

Under the Security Agreement, all CF-held detainees will be either released or transferred to GOI custody by the end of 2009 (ref D). The Joint Sub-Committee (JSC) on detainees, co-chaired by MNF-I and the Ministry of Interior (MOI), has met twice and established a mutually agreed upon a release process. On the first of each month, Task Force 134 (TF134) provides a list of up to 1,500 detainees proposed for release the following month. The GOI then has 30 days to review the files of those on the list. Following this initial 30-day period, unless the GOI designates an individual as a "person of interest" or notifies TF134 that an outstanding warrant exists, each detainee on the list will be released. Should the GOI notify TF 134 that a warrant exists or designate someone as a "person of interest," it will then have 45 days to produce a valid warrant for the individual. (Note: This was increased from 30 days during the first Detainee JSC meeting on February 21. End Note.)

¶4. (S) Since the establishment of these procedures on January 1, CF have postponed the release of 21 detainees due to the existence of valid warrants and continue to hold 121 individuals identified by the GOI as "persons of interest" due to intelligence indicating they have engaged in criminal insurgent activity. If the GOI is not able to produce valid warrants, each detainee will be released by CF. If a warrant is produced, the detainee will be transferred to GOI custody pursuant to Article 22 of the Security Agreement. (Note: To date, no detainees have been transferred to the GOI based on a warrant or detention order. This is primarily because detainees do not want to be transferred to GOI custody and wish to remain in USG custody as long as possible, and we will not transfer detainees to overcrowded prisons. The GOI

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criticized this policy in the third Detainee JSC on March 28 and promised that overcrowding problems will soon be fixed in prisons. End Note). All detainees are released near to their point of capture, in coordination with the CF battle-space commander and in cooperation with GOI officials. If a detainee fears his life will be in danger if he is released at the point of capture, CF coordinates with the Ministry of Human Rights to release him at another location.

¶5. (S) According to the U.S. plan for releases, only low-threat detainees so far have been proposed for release. Most of these will be set free prior to July 1. At the same time as these releases, TF134 is also working on the files of the medium- and high-threat detainees and will soon provide intelligence assessments of the this group of approximately 5,000 detainees to Iraqi Technical Teams (ITTs). These GOI teams will review the intelligence files with U.S. military intelligence personnel in order to obtain as much evidence as possible to warrant Iraqi criminal charges and arrest warrants against this higher-threat group and place them in GOI custody. Both sides wish to transfer as many of the 5,000 detainees to GOI custody as possible because they are viewed as a continued threat to Iraqi security. A total of 60 intelligence, judicial and law enforcement specialists have been selected by the GOI to participate on the ITTs.

¶6. (S) Finally, there are 2,500 detainees classified by CF as "high threat." These come in two classes: dangerous radicals (leaders of Iraqi-based terrorist organizations) and enduring security threats (members of international terrorist organizations who have the capacity to engage in activities abroad). All of these will undergo GOI judicial review, as will all 138 third country nationals. Detainees with valid detention orders will be transferred to GOI custody by December, at which time all USG-run detention facilities possibly will be shut down or handed over to the GOI.

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GOI Detainee Issues  
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17. (S) While much attention has been focused on detainees in USG custody and the process by which they will be either released or transferred to GOI facilities, GOI detention facilities continue to suffer from significant problems that are not being addressed. According to the Ministry of Human Rights, approximately 12,000 individuals with valid amnesty release orders and thousands of additional detainees with valid judicial release orders remain in GOI custody. For example, of the 828 detainees held in the three facilities that comprise the Ministry of Defense's (MOD's) Ninewa Operations Command, Kindi, Kisik and Kazlani, 277 have been issued valid release orders. Despite repeated directives from the MOD's general counsel, commanders at these facilities refuse to free such detainees. Releases are also held up due to an antiquated warrants check process required before a detainee is released. Iman Naji, the MOD's Director of Human Rights, told us that it would take the direct intervention of Prime Minister Maliki to get these prisoners released.

18. (S) Case processing is a problem at many MOI, Ministry of Justice (MOJ), MOD and Ministry of Labor and Social Affairs (responsible for juveniles) pre-trial detention centers. Upwards of 15,000 pre-trial detainees spend weeks, months and, in some cases, years before they are brought before an IJ to have their case heard. This is due primarily to an insufficient number of IJs and poor security conditions that leave judges open to intimidation. In addition, the constant influx of new detainees from operations continues to outpace the ability of judges to investigate and adjudicate cases. Even at the MOJ's largest unit, the Rusafa Prison Complex, which boasts a strong USG presence and a robust legal clinic that has served over 8,000 people since May 2008, many detainees languish for long periods of time before their case is brought to trial. PMIN visited the legal clinic at Rusafa with emboffs on March 23. The Iraqi lawyer who directs it told us that while there are fewer cases of prisoners waiting years for hearings, there still are some (he declined to give a number but he was confident the number was less than in 2004 or 2005).

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Sunni Concerns  
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19. (S) The vast majority of detainees, both those held by the USG and by the GOI, are Sunni Arab. Many of our Sunni Arab interlocutors, from members of parliament to civil society leaders, view the issue through a distinctly sectarian lens. On CF releases, they are primarily critical of the method by which detainees are released from custody.

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Coalition Forces liaise with local GOI officials, and often the area IP commander, to apprise them of any releases taking place in their regions. Some Sunni leaders are concerned that individuals are immediately rearrested by the IP, usually for no reason other than having previously been in USG custody. Hassan Deghan al-Janabi, a Sunni member of parliament on the Detainee Affairs Committee, has told us March 17 that his committee "works well" with the GOI, but he said fears that released detainees will be rearrested have led many former CF-held detainees to move away from their homes after they are released.

110. (C) One case that explains the Sunni Arab concern is that of 48 men formerly held by the Coalition Forces who were mistakenly turned over to the Iraqi Police in Ninewa in January 2009. The Iraqi security forces had no arrest warrant for the men but took custody of them anyway. Since then the men have remained in Iraqi detention. PMIN raised the case with Deputy Interior Minister Ayden on the margins of the March 28 SA Detainee Issues Committee meeting. Ayden knew about the case and acknowledged that the Iraqi authorities had not had arrest warrants. He said the

Interior Ministry has written to the Ninewa Operations Command explaining that the men should be released. Aydin said he hoped to have news before the next Committee meeting April 4.

¶11. (S) Sunni leaders have also expressed concern over the lack of support provided to newly released detainees. Sheikh Mahmoud Ali Ahmed al-Falahi, the Director of the Sunni Endowment's Human Rights Office, told PolOff March 29 that he receives "hundreds" of calls each week from former detainees having difficulty finding steady employment. The GOI is "not very helpful" in this regard, and he is worried that these individuals pose "easy recruiting targets" for terrorist organizations such as Al Qaeda in Iraq.

¶12. (S) Of perhaps even greater alarm to our Sunni contacts are the targeted "sweeps" conducted by Iraqi Security Forces in various parts of the country (ref C). While the GOI claims that these are undertaken for security purposes, the disproportionately large number of Sunnis arrested during these operations leads many in the Sunni community to see sectarian or political motives underlying them. Just as a majority of those arrested in operations such as "Benevolent Diyala" were Sunni Arab, so too are an outsized number prisoners languishing in GOI facilities. Some of our contacts have alleged a sectarian bias behind the length of time that detainees are forced to wait before an IJ will review their case.

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Comment  
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¶13. (S) Aside from its compelling humanitarian aspects, the detainee issues continues to be a serious obstacle hindering nation-wide political accommodation. The GOI has a legitimate interest in safeguarding its citizens and establishing control throughout the country's cities and rural areas. It also needs to show that it is maintaining a balance between security concerns and maintaining a fair and even-handed approach toward law enforcement. This means it must explain more often why it arrests persons, especially prominent community figures. It also must address more openly charges of sectarian bias, especially in locales like Diyala where the composition of those arrested is so unbalanced. (In Diyala's case, Sunni Arabs represent a much larger percentage of those arrested than Shi'a even though there has been killing on both sides.) As CF gradually disengages from the issue, a larger burden will fall upon the Qdisengages from the issue, a larger burden will fall upon the GOI to maintain a nonsectarian approach to arrest and imprisonment. His Da'wa party successfully ran on a "law and order" platform during January's provincial elections, and it is a good bet that Prime Minister Maliki will keep taking measures which portray him as security focused, especially as we look down the road toward national elections slated for late 2009. The Maliki government's stance on detainees, and willingness to take into account Sunni Arab concerns, may provide a glimpse of what is to come.  
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